

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE  
CONFERENCE OF THE NAACP,  
EMMANUEL BAPTIST CHURCH, NEW  
OXLEY HILL BAPTIST CHURCH,  
BETHEL A. BAPTIST CHURCH,  
COVENANT PRESBYTERIAN CHURCH,  
CLINTON TABERNACLE AME ZION  
CHURCH, BARBEE'S CHAPEL  
MISSIONARY BAPTIST CHURCH, INC.,  
ROSANELL EATON, ARMENTA EATON,  
CAROLYN COLEMAN, BAHEEYAH  
MADANY, JOCELYN FERGUSON-  
KELLY, FAITH JACKSON, AND MARY  
PERRY,

Plaintiffs,

v.

PATRICK LLOYD MCCRORY, in his  
official capacity as the Governor of North  
Carolina, KIM WESTBROOK STRACH, in  
her official capacity as Executive Director of  
the North Carolina State Board of Elections,  
JOSHUA B. HOWARD, in his official  
capacity as Chairman of the North Carolina  
State Board of Elections, RHONDA K.  
AMOROSO, in her official capacity as  
Secretary of the North Carolina State Board  
of Elections, JOSHUA D. MALCOLM, in his  
official capacity as a member of the North  
Carolina State Board of Elections, PAUL J.  
FOLEY, in his official capacity as a member  
of the North Carolina State Board of Elections  
and MAJA KRICKER, in her official capacity  
as a member of the North Carolina State  
Board of Elections,

Defendants.

Civil Action No. 1:13-CV-658

LEAGUE OF WOMEN VOTERS OF  
NORTH CAROLINA, A. PHILIP  
RANDOLPH INSTITUTE, UNIFOUR  
ONESTOP COLLABORATIVE, COMMON  
CAUSE NORTH CAROLINA, GOLDIE  
WELLS, KAY BRANDON, OCTAVIA  
RAINEY, SARA STOHLER, and HUGH  
STOHLER,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA,  
JOSHUA B. HOWARD in his official  
capacity as a member of the State Board of  
Elections, RHONDA K. AMOROSO in her  
official capacity as a member of the State  
Board of Elections, JOSHUA D. MALCOLM  
in his official capacity as a member of the  
State Board of Elections, PAUL J. FOLEY in  
his official capacity as a member of the State  
Board of Elections, MAJA KRICKER in her  
official capacity as a member of the State  
Board of Elections, and PATRICK L.  
MCCRORY in his official capacity as  
Governor of the state of North Carolina,

Defendants.

Civil Action No. 1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA; THE  
NORTH CAROLINA STATE BOARD OF  
ELECTIONS; and KIM W. STRACH, in her  
official capacity as Executive Director of the

Civil Action No. 1:13-CV-861

North Carolina State Board of Elections,  Defendants.
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**MOTION TO CONSOLIDATE AND MOTION TO PARTICIPATE IN THE  
DECEMBER 12, 2013 SCHEDULING CONFERENCE**

Pursuant to Rule 42 of the Federal Rules of Civil Procedure, the United States of America respectfully moves to consolidate *United States v. North Carolina*, No. 1:13-cv-861 (M.D.N.C.), with *North Carolina State Conference of the NAACP v. McCrory*, No. 1:13-cv-658 (M.D.N.C.) [hereinafter “NAACP”], and *League of Women Voters of North Carolina v. North Carolina*, No. 1:13-cv-660 (M.D.N.C.) [hereinafter “LWV”]. The United States is filing the instant motion in all three cases. If consolidation is granted, the case with the lowest case number (*i.e.*, the first filed case, 1:13-cv-658) would be the lead case.

Rule 42(a) establishes that “[i]f actions before the court involve a common question of law or fact, the court may (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.” Where litigation is at an early stage and there are common issues of law and fact, consolidation under Rule 42(a) would serve “the interests of justice by avoiding inconsistent results, and would further judicial efficiency and economy by conserving resources.” *Capacchione v. Charlotte-Mecklenburg Bd. of Educ.*, 179 F.R.D. 177, 179 (W.D. N.C. 1998). “[C]onsolidation is particularly appropriate when the actions are likely to involve substantially the same witnesses and

arise from the same series of events or facts,” *Anderson v. Wade*, No. 3:05-CV-33, 2007 WL 2934874, at \*1 (W.D. N.C. Oct. 5, 2007) (internal quotation marks and citations omitted), and “considerations of judicial economy strongly favor simultaneous resolution of all claims growing out of one event,” *Ikerd v. Lapworth*, 435 F.2d 197, 204 (7th Cir. 1970).

*United States v. North Carolina* is a challenge under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, to portions of North Carolina House Bill 589 (2013) that reduce the period during which voters may cast one-stop absentee ballots (the “early voting period”), eliminate same-day voter registration during the early voting period, prohibit the counting of provisional ballots cast by voters who attempt to vote in their county but outside their home precinct, and impose a new photo identification requirement for in-person voters. This case raises common questions of both law and fact with the Section 2 and Fourteenth and Fifteenth Amendment claims against HB 589 currently before this court in the *NAACP* and *LWV* cases. The *NAACP* case brings challenges under Section 2 and the Fourteenth and Fifteenth Amendments to the same portions of HB 589 challenged in *United States v. North Carolina*, among others. The *LWV* case brings challenges under Section 2 and the Fourteenth Amendment to portions of HB 589 that reduce the early voting period, eliminate same-day voter registration during the early voting period, and prohibit the counting of provisional ballots cast by voters who attempt to vote in their county but outside their home precinct.

In light of the complexity of these common questions, consolidation would “enhance efficiency and economy for all concerned,” *Hanes Cos. v. Ronson*, 712 F. Supp. 1223, 1230 (M.D. N.C. 1988), and should therefore be granted.

On November 15 and 25, 2013, the parties, including the United States, met and conferred pursuant to Rule 26(f) to discuss discovery and the schedule in these cases, and the parties will file Rule 26(f) reports on December 5, 2013. The Court has scheduled a scheduling conference in the *NAACP* and *LWV* cases on December 12, 2013, if the parties are not able to reach an agreement on a discovery plan. *See* Notice, *NAACP v. McCrory*, 1:13-cv-658 (Oct. 22, 2013) (Docket No. 25); Notice, *League of Women Voters v. North Carolina*, 1:13-cv-660 (Oct. 22, 2013) (Docket No. 27).

The United States intends to file an individual Rule 26(f) report, on December 5, 2013, if the parties are unable to reach agreement on a schedule. The United States also seeks the Court’s permission to participate in the December 12, 2013 scheduling conference with the Court in the *NAACP* and *LWV* cases, if such a conference is held.

In the course of the parties’ Rule 26(f) conference in these cases on November 25, 2013, the parties met and conferred regarding the motion to consolidate. Counsel for the State defendants in the three respective cases advise that the defendants do not oppose consolidation. Counsel for the plaintiffs in the *NAACP* and *LWV* cases advise that plaintiffs support consolidation for purposes of discovery only, but oppose consolidation for other purposes at this time. To date, the parties have not reached agreement on a

proposed schedule, and the parties will likely be filing individual reports pursuant to Fed. R. Civ. P. 26(f) and Local Rule 16.3 on December 5, 2013.

For the foregoing reasons, the United States moves to consolidate the three cases and to appear in conference scheduled for December 12, 2013.

Dated: November 26, 2013

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*/s/ John A. Russ IV*

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**CERTIFICATE OF SERVICE**

I hereby certify that I have filed on November 26, 2013, the foregoing **Motion to Consolidate and Motion to Participate in the December 12, 2013 Scheduling Conference** electronically using the CM/ECF system in case numbers 1:13-CV-861, 1:13-CV-658, and 1:13-CV-660, which will send notification of such filing to the following:

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